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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,179	08/01/2003	James M. Leventhal	25739-024	4894
30623	7590	01/11/2006		
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C. ONE FINANCIAL CENTER BOSTON, MA 02111				
			EXAMINER POLLICOFF, STEVEN B	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### Period for Reply

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1) ☒ Responsive to communication(s) filed on 13 October 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) ☒ Claim(s) 1-49 is/are pending in the application.  
4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 22-49 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/12/04.

4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Invention II directed to claims 22-49 in the reply filed on October 13, 2005 is acknowledged.

***Drawings***

2. The drawings are objected to because the drawings need to show sectional lines with respect to sectional views taken. In particular, Fig. 9C does not show the orientation of where the sectional view was taken and no sectional lines appear to be present in any of the submitted drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 48 and 49 lack clear antecedent basis for the "product." It appears Applicant may have inconsistent terminology with independent claim 40 which positively claims an "item," not a product.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It appears as though the insert card defines either tabs, as shown in Fig. 7, or notches, as shown in Fig. 9D, but it is not clear how the notches define tabs as claimed.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-42 and 45-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Theros (U.S. Pat. No. 4,872,551).

As to claim 22, Theros discloses a packaging system for displaying a product comprising a housing (Theros Fig. 1, reference number 10) including a first and second portion that define a chamber (Fig. 1 and 3, 38) and an internal configuration to accommodate a shape of the product. The housing also has a first closed end (Fig. 1, 62) and second open end (Fig. 3, 48) where a portion of the product is exposed. Theros also discloses an insert card (Fig. 1, 32 and 34) between the first and second portions being substantially planar to support the housing when closed as in Fig. 1 and 2. The insert card has an interior notch (Fig. 3, 42) defined at the base of the insert card and when the package is closed as in Fig. 1 and 2, the notch accommodates the chamber of the housing so that the product may be disposed within the chamber.

As to claims 23 and 32, Theros discloses that the first and second portions are made of a transparent material (Theros Column 3, Lines 15-19).

As to claim 24, Theros discloses that the perimeter edge of the interior notch (when folded to house the product) defines one or more tabs configured to couple with the product (Theros Fig. 3, where the ellipsoidal chamber walls narrow inwardly before expanding to form the shoulder at 64).

As to claim 25, Theros discloses that the outer surface of the product includes one or more recesses configured to receive and mate with the tabs when the product is disposed in the chamber (see Fig. 1 generally where the tabs follow the curvature of the product).

As to claims 26-29, Theros discloses that the first and second portions are substantially similarly sized and shaped and that both portions define at least an upper section of a first shape and size and at least a lower section of a second shape and size to accommodate the product (Fig. 3 generally). Theros also discloses that the first and second portions define one or more sections of first and second shapes and sizes and one or more sections having one or more shapes and one or more sizes to accommodate the shape of the product (Fig. 3 generally).

As to claims 30,31 and 35-39, "a retractable razor" is being treated as merely modifying the intended use phrase of claim 22, and thus, none of the elements associated with the retractable razor (i.e. the actuating element, the handle) are required as a further limitation of the packaging system.

As to claims 33 and 34, Theros discloses that the first and second portions define an upper section having an internal size and shape to accommodate one or more moving elements of the product as well as provide clearance such that the product can demonstrate its operating positions without contacting the upper section (see Fig. 1, 20).

As to claim 40, Theros discloses a system for containing an item comprising an item (Fig. 1, 12) having one or more moving elements (Fig. 1, 18), the item also having an actuating element (Fig. 1, 18) such that manipulation of the element causes the moving elements to activate (Fig. 1 generally). Theros also discloses a transparent (Column 3, lines 15-19) packaging assembly (Fig. 3 generally) containing an internal

configuration (Fig. 3, 38) permitting the item to activate in one or more operating states (Fig. 1 generally).

As to claim 41, Theros discloses that the product remains in a substantially stationary position within the housing when the product is activated to one or more operating positions (Fig. 1 generally).

As to claim 42, Theros discloses that the internal configuration defines one or more protrusions configured to couple with the product (Theros Fig. 3, where the ellipsoidal chamber walls narrow inwardly before expanding to form the shoulder at 64) and that the outer surface of the product includes one or more recesses configured to receive and mate with the protrusions when the product is disposed in the chamber (see Fig. 1 generally where the protrusions follow the curvature of the product).

As to claim 45, Theros discloses that the packaging system includes a first portion capable of accommodating the stationary elements and a second portion capable of accommodating the moving elements (Fig. 3, 38 and 66 for a first portion; 64 and 48 for a second portion).

As to claim 46, Theros discloses that the first portion of the internal configuration provides an internal clearance to permit the item to activate to one or more of the operating states (Fig. 1 generally).

As to claim 47, Theros discloses that the second portion of the internal configuration is capable of being sized to conform to a shape of the nonmoving stationary elements of the item as well (Fig. 1 generally).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theros '551 in view of Edell (U.S. Pat. No. 4,328,894).

As to claim 43, Theros does not disclose that the system of claim 40 further includes a clasp to couple the item with the packaging system and to dispose the item in a substantially stationary position. However, Edell discloses a clasp (Fig. 1, 10) that couples the item to the packaging system (Fig. 1 generally) to prevent movement of the item with respect to the display card. Therefore, it would have been obvious to one of



ordinary skill in the art at the time of the invention to modify packaging system of Theros to include a clasp, as taught by Edell, for the purpose preventing movement of the item within the packaging system and further to prevent tampering of the item disposed within the packaging system (Edell Column 1, Lines 6-11).

As to claim 44, Theros does not disclose that a portion of the internal configuration defines one or more recesses and that the clasps define one or more tabs, or that each recess is disposed to receive and mate with one of the tabs when the item is disposed in the packaging system. However, Edell discloses an internal configuration defining one or more recesses (see Fig. 1 where the clasp, 10, is inserted into the packaging system, 12) and that the clasp defines tabs (Fig. 2, 30) that mate with the recesses to secure the item to the packaging system. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify packaging system of Theros to include a clasp with tabs and a packaging system with recesses that mate with the tabs, as taught by Edell, for the purpose preventing movement of the item within the packaging system and further to prevent separation of the clasp from the packaging system (Edell Column 3, Lines 22-45).

6. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theros '551 in view of Stanford et al., (U.S. Pat. No. 6,443,305).

Theros does not disclose that the packaging holds a razor. However, Stanford discloses a packaging system containing a razor for the purpose of safe transit to and display at consumer product stores. Therefore, it would have been obvious to one of

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ordinary skill in the art at the time of the invention to modify packaging system of Theros to include a razor as disclosed by Stanford for the purpose of safe transit to consumer product stores and safe display on the store shelves (Stanford Column 2, lines 41-45).

7. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theros '551 in view of Blaustein et al., (U.S. Pat. No. 6,311,837).

Theros does not disclose that the packaging holds a toothbrush. However Blaustein discloses a packaging system for a toothbrush so consumers can view the product and activate it while maintaining sanitary conditions for the product. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify packaging system of Theros to include a toothbrush as disclosed by Blaustein for the purpose of allowing consumers to try the product yet still maintaining the sanitary condition of the product.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stanford et al., (U.S. Pat. No. 6,443,305) discloses a packaging system for a razor. Blaustein et al., (U.S. Pat. No. 6,311,837) discloses a packaging system for a tooth brush containing an actuating element that can be activated while the item is in still disposed in the package. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SBP



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